

CONWAY PLANNING BOARD

MINUTES

FEBRUARY 14, 2008

A meeting of the Conway Planning Board was held on Thursday, February 14, 2008 beginning at 7:00 pm at the Conway Town Office in Center Conway, NH. Those present were: Chair, Robert Drinkhall; Selectmen's Representative, Larry Martin; Vice Chair, Martha Tobin; Theodore Sares; Patricia Sell; Planning Director, Thomas Irving; and Planning Assistant, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

Ms. Tobin made a motion, seconded by Mr. Sares, to approve the Minutes of January 24, 2008 as written. Motion unanimously carried.

PUBLIC HEARING – RSA 674:54 – STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION

Mark Morrill and Dave Rodrigue appeared before the Board. This is a public hearing pursuant to RSA 674:54 for a NHDOT highway maintenance facility on Eaton Road (PID 291-30/279- 3). Mr. Morrill stated that this facility would house the salt and sand storage sheds as well as the Bureau of Bridge Maintenance. Mr. Morrill stated that the house on the property would be subdivided off at a later date.

Mr. Rodrigue stated that the site would also be a fueling facility with two underground storage tanks. Mr. Rodrigue stated that the facility would also house the Highway Maintenance, store winter maintenance equipment and be used by other municipalities. Mr. Rodrigue stated that the salt storage facility would have open sheds on the side to store salt spreader racks and other equipment.

Mr. Sares asked why they want to construct a new facility. Mr. Morrill stated to have a more modern facility and it is a large enough parcel to have both the fuel and the salt together. Mr. Sares asked if this is predicated on the bypass. Mr. Morrill stated that it is to have it off the Bypass as well. Ms. Sell asked if this section of the bypass was going to happen. Mr. Morrill stated even if the bypass is not constructed, it is still a good location. Ms. Sell asked if they own the home. Mr. Rodrigue answered in the affirmative.

Ms. Sell asked what is the salt and sand going to be on. Mr. Rodrigue stated that it would be a gravel surface with membranes and a brine collection system underneath. Ms. Sell asked if the facility would be gated. Mr. Morrill answered in the affirmative and stated that it would be gated after the fuel site. Mr. Martin asked about the exemption. Mr. Irving reviewed the RSA. Mr. Martin stated that he knows that the Board can't require anything, but the Town regulations do require all utilities to be underground and the plans show an overhead line. Mr. Martin asked, if feasible, if the utilities could go underground to the facility. Mr. Rodrigue stated that he would take that into consideration.

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Mr. Drinkhall stated there are wetlands in the area. Mr. Irving stated there are wetlands on the site and there is a 100-foot setback. Ms. Sell stated she thought this type of facility would be prohibited in a wetland area. Ms. Tobin stated that she is extremely concerned with the wetland area, but we cannot do anything about it. Mr. Sares stated that he is concerned with the relocation, as it appears it would increase traffic in a residential area, especially with other municipalities using the facility. Mr. Rodrigue stated he is not sure how many other fleets would be using the fuel facility. Mr. Sares stated there should be a gate around the fuel facility as well.

Mr. Irving stated the Town does not permit salt sheds in their ordinance, but because it is government use on government land the Town's zoning does not apply. Mr. Irving stated the requirement for underground utilities is in site plan and zoning ordinances. Mr. Irving stated in regard to the issue of traffic, how many municipalities are using the facility off the Kancamagus Highway. Mr. Rodrigue stated he is not sure, but can check and provide the answer to the Board, but he doesn't think there are many.

Mr. Irving stated in regard to the gate, the NHDOT is proposing a gate between the fueling station and the maintenance building, but Mr. Sares is requesting a gate to be before the fueling station. Mr. Sares agreed. Mr. Irving asked if the NHDES would review all of these proposals. Mr. Rodrigue stated that he can check to see, but the fueling system has the highest degree of review, but he would check on the specifics.

Ms. Tobin asked how long this property has been government land. Mr. Morrill stated that it was excess land during the bypass taking. Ms. Sell asked if this site was considered specifically because of the bypass or have other parcels been considered. Mr. Morrill stated he has been looking for a site for ten years. Mr. Morrill stated that they wanted easy access and thought this was the best place. Ms. Sell asked what is meant by other municipalities. Mr. Rodrigue stated it would be used by the State Police, but not sure with this geographical area if any municipality would use it. Mr. Rodrigue stated that school districts could also purchase their fuel from this facility.

Mr. Sares asked if the current facility is in Conway or Albany. Mr. Rodrigue answered Conway. Ms. Sell asked how is this going to affect the abutters. Mr. Rodrigue stated the abutters are the Conway Bypass right-of-way, the Kennett Company, the State of New Hampshire and across the street there are no houses, but the property is owned by someone in Vermont. Ms. Sell stated that they should take into consideration the increase in traffic. Mr. Morrill stated that there are approximately 8 to 10 employees, so there shouldn't be a huge traffic increase.

Ms. Sell asked if a permit from NHDES is required. Mr. Morrill answered in the affirmative. Mr. Drinkhall asked for public comment; there was none. Mr. Sares recommended drafting a letter to NHDOT outlining the Board's concerns and possibly adding a statement that this move is not predicated on the bypass being completed.

Mr. Sares motion, seconded by Ms. Tobin, to send a letter to the NHDOT outlining the Board concerns in regard to underground utilities, traffic impacts, environmental impacts on the wetlands, a gate around the entire perimeter of the facility and that the facility is not predicated on the development of the proposed bypass. Motion unanimously carried.

ROBERT AND EUNICE MCINTIRE – FULL SITE PLAN REVIEW CONTINUED (PID 253-42) FILE #FR07-16

This is an application to construct a 2,100 square foot storage addition and associated infrastructure. This application was accepted as substantially complete on October 25, 2007. Mr. Irving stated that the applicant has requested a continuance. **Mr. Sares made a motion, seconded by Ms. Tobin, to continue the Full Site Plan Review for Robert and Eunice McIntire until February 28, 2008. Motion unanimously carried.**

OTHER BUSINESS

Red Jacket Mountain View, LLC (PID 230-48 & 51) – §123-4.A.4 and §123-4.A.5: Chris Meier of Cooper Cargill Chant representing the Red Jacket appeared before the Board. Mr. Meier stated that this is a request for applicability to a HRU [Heat Recovery Unit] system on the southeast side of the building, which was not on the original site plan before the Planning Board. Mr. Meier stated that the applicant believes the regulations are not applicable, but the Town Planner believes they are applicable and that is why they are before the Board this evening.

Mr. Meier stated that there is history with this project and he wanted to clear the air as he believes when Randall Cooper [of Cooper Cargill Chant PA] was before the Selectmen asking for a conditional permit to operate while the Planning Board was reviewing this, he was incorrect on when the Town knew about the HRU. Mr. Meier submitted a copy of the building permit to the Board with copies of the plans of the HRU (attached). Mr. Meier stated that the building permit was submitted on September 10, 2007 or thereabouts and the plans attached were submitted. Mr. Meier stated that there were other plans that were submitted, but he only attached the ones that were relevant. Mr. Meier stated that the plans show the HRU on the back of the building how it was installed and the location it was installed.

Mr. Meier stated that the applicant did notify the Town of the HRU, but they did not notify the Planning Board. Mr. Meier stated that he would argue that it was a mutual mistake, that it did not get back to the Planning Board as no one at that point in time that it was submitted for a building permit ever considered that it fell out of the not applicable of the site plan regulations. Mr. Meier stated that no one thought it was an issue that it would have required a full site plan review in comparison to the full size project. Mr. Meier stated that it is a 1,500 [1,595] square foot facility on a 1,500 [1,595] square foot slab.

Mr. Irving stated that Mr. Meier is alleging that the Town was aware of this unit after the Planning Board review and at the time when the building permit was issued. Mr. Irving stated that Mr. Meier sent to the Town Attorney [Peter Malia of Hasting Law Firm] a document that shows this particular HRU, but it also shows that it is on a plan with a series of 300-M, but the rest has been cut off. Mr. Irving stated that the Town Building Inspector [David Pandora] has gone through all the plans he reviewed, and there are a stack of them, and there are no 300-M plans in the plan sets submitted. Mr. Irving read a memorandum from David Pandora, Conway Building Inspector (attached).

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Mr. Drinkhall asked when this unit was first discovered by the Town. Mr. Irving stated he believes the first time Mr. Pandora knew of the unit on site was on the date of the fire, which he believes was the last Saturday of December. Mr. Irving stated he became aware of the unit and confirmed the concrete pad when he went to the site on January 11, 2007. Mr. Meier stated that it was his understanding that the plans were presented to Mr. Pandora.

Mr. Meier stated perhaps Mr. Pandora was talking in his memorandum about the slab underneath and not the HRU itself. Mr. Meier stated that Mr. Pandora's memorandum stated he wasn't aware of the slab. Mr. Meier stated if Mr. Pandora is mincing words to say he did not know about the HRU then he would have to ask Mr. Pandora if he was aware of the HRU unit because his memorandum does not answer that question.

Mr. Irving stated that Mr. Pandora shares office space within inches of his door and he went through the plans with Mr. Pandora searching for this series of plans and they are not there. Mr. Irving stated to the best of Mr. Pandora's knowledge, information and belief he has not seen these plans until he showed him the faxed copy of the building permit. Mr. Meier stated that he would ask Mr. Pandora if he has plans dated September 10, 2007 as the applicant has indicated to him that these plans were submitted with the building permit because they gave him a copy of the application and the plans submitted with it and these were right in the middle of it.

Mr. Irving stated the plans referenced here this evening Mr. Pandora has indicated that he has not seen them before. Mr. Drinkhall stated that the Town has indicated it is a different lettered series of plans that they have received and he did see originally those plans and they were not in it. Mr. Drinkhall stated that he can back that up unless there are two sets of plans.

Mr. Sares stated as to whether this Board is for or against this, coming in he has not had any pre-discussion animus towards the Red Jacket. Mr. Sares stated his mind set was to simply go through the site plan review, whether they were open or not, whether they were violating an injunction or not, he could care less. Mr. Sares stated what is important is to go through the site plan process as that is what this Board does as they have no enforceable power. Mr. Sares stated that this Board cannot enforce one thing or another. Mr. Sares stated since Mr. Meier created an issue that Mr. Cooper did not create at the Board of Selectmen's meeting, he would ask why Mr. Cooper did not know about it and Mr. Meier does.

Mr. Sares asked Mr. Irving if the Town Building Inspector should have been looking for some sort of exhaust system for a water park whether it was on a plan or not. Mr. Irving stated that he could not speak for the Building Inspector, but in his opinion he would have been looking for items that were on the plans submitted to him. Mr. Sares agreed. Mr. Sares stated that there was no pre-meeting animus unless it has been created.

Ms. Tobin stated that she thinks Mr. Martin would back her up on this, when the plan came before the Board, the Board specifically asked about the ventilation units and was told they would be underground and not visible. Ms. Tobin stated there didn't seem to be anything on the plan regarding heating and ventilation and the Board was told that the only thing visible were the outside air vents. Ms. Sell stated that they built it anyway. Ms. Sell asked who Mr. Meier was referring to when he stated no one thought it was an issue. Mr. Meier answered anyone at the

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Red Jacket, their contractor, the sub-contractors and his understanding David Pandora as well. Ms. Sell stated that he was unaware of it obviously.

Mr. Meier stated that the unit is less than 5% of the building they put up next to it and it is one-third of the height and in relation to that building and size of the property that has over one million square feet of building on it and has 40 acres of land it is insignificant. Ms. Sell stated that she would disagree. Ms. Sell stated with all due respect they had all the criteria listed as far as what is required for site plan review and they completely disregarded all those rules and regulations and they went and built it anyway. Mr. Meier stated they did not as they fell under what a small undertaking would be. Mr. Meier stated there are five criteria's and they looked at each one of them. Ms. Sell stated that is a decision for the Planning Board to make. Mr. Meier agreed.

Ms. Tobin stated now that it is already there makes it insignificant that is the problem. Mr. Meier stated that with regard to his initial proposal he believes these plans were submitted and obviously his argument is on the basis that these plans were submitted. Mr. Meier stated that he would ask that the Red Jacket be put in the same scenario that the Hampton Inn is that had the exact same issue because of these new HRU's that are built specifically custom for each installation.

Mr. Meier stated that the Hampton Inn did not have their HRU on their initial site plan that was submitted to the Board and, in fact, they didn't have the HRU on the plans submitted for the building permit. Mr. Meier stated they were granted a Certificate of Occupancy without the Planning Board looking at the HRU is his understanding. Mr. Meier stated when the Planning Board has taken the authority to look at it and mitigate it they have been allowed to operate in the interim and the Red Jacket is being treated differently and not been allowed to operate.

Mr. Meier stated that they have no problem coming back to the Planning Board and working through how to mitigate the structure, moving the structure, putting the structure on gravel, or putting fences around the structure. Mr. Meier stated that the applicant is simply looking for a conditional, temporary permit to be open during February vacation so they can keep the 50 or so employees employed for the purpose of this water park employed and to keep their promises to their guests that have been sold packages to the water park. Mr. Meier stated that it is what was done for the Hampton Inn and it is not being done for the Red Jacket.

Mr. Irving stated first of all the particular request before the Board tonight, which by the way, not sure if Mr. Meier made that request, has nothing to do with the Hampton Inn. Mr. Irving stated secondly, the Hampton Inn circumstances are entirely different and when it is necessary and appropriate for the Planning Board to be involved in that they certainly will be.

Mr. Irving stated the third element is the action by the Board of Selectmen regarding the enforcement procedure is as exactly as Mr. Sares stated earlier, a different track all together. Mr. Irving stated what is before this Board tonight is whether or not what was constructed is subject to a site plan review and he believes the Board should consider that question.

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Mr. Meier stated that he did state before he made his argument he wanted to offer an alternative to the Board. Mr. Meier stated that the Red Jacket would waive any argument that the regulations weren't applicable in exchange for a conditional permit to operate during February vacation and until the review goes through. Mr. Irving stated that this Board cannot do that.

Mr. Drinkhall stated that the unit may be insignificant in square footage, but it is not insignificant to the abutters and not to the other items that were on the plan that needed to be changed. Ms. Sell stated that this Board does not follow precedent. Mr. Meier stated he knows that but the Board has to apply the laws of the State equally or it is a constitutional violation.

Mr. Sares asked what the applicant is seeking. Mr. Meier stated that the applicant would like the Board to determine that a site plan is not applicable for this unit and the slab it is on. Mr. Sares stated that Mr. Cooper told the Board of Selectmen that the applicant made a mia culpa and said the Red Jacket was stupid, quote on quote, they made a stupid mistake. Mr. Sares stated now Mr. Meier is coming in representing the Red Jacket from the same firm stating that they didn't make a mistake. Mr. Meier stated that he did not state that. Mr. Sares stated that Mr. Meier stated that it was insignificant relative to the entire project; therefore, it is not a mistake.

Mr. Sares stated he does not know if the applicant is under injunction or not, but that is not this Board's issue. Mr. Sares stated that the Red Jacket is a good employer and their guests are important, but the Board's only obligation is to make sure they go through the site plan review process and if during that process they are fined that is not our purview, that is someone else's purview. Mr. Sares stated that the applicant should be concerned with getting through the site plan review process, but they don't want to do that and that is wrong.

Mr. Meier stated that is why he asked as an alternative tonight to grant a conditional permit pending the Planning Board review in return of a waiver of any argument that the site plan regulations are applicable. Mr. Meier stated that is their alternative. Mr. Drinkhall stated the Board cannot do that.

Mr. Martin stated in regard to the plan that has been seen this evening, he has been through this process since step one and has never seen this unit on any plan nor does he believe has any other board member, therefore, that does not make it our mistake. Mr. Martin stated that it comes back to his smoke and mirrors theory that we weren't to know about it until the necessary time. Mr. Martin stated to find this unit insignificant would go against everything this board has done or tries to do.

Mr. Martin stated whether the Hampton Inn has an issue, it hasn't been brought to his attention and he knows nothing about that. Mr. Martin stated what is before this Board right now is a flagrant disregard for a site plan review for this unit. Mr. Martin stated it is not insignificant and to think we didn't see it, we would have seen it. Mr. Martin stated that he would have seen a 1,500 square foot pad on the corner of the building where he believes, if his memory serves him correctly as he does not have a plan in front of him, was a drainage basin and now that drainage basin is gone. Mr. Martin stated don't tell him that he might have missed it.

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Mr. Meier stated that he is not telling the Board that they missed it as it was a change order part of the building permit application in September; it was after this Board. Mr. Meier stated if Mr. Sares heard him rescind any *mia culpa* by Mr. Cooper, he did not. Mr. Meier stated that his statement was that it was a mistake on all parties because the plans were submitted that showed it to the Building Inspector on September 10th.

Mr. Sares stated that Mr. Cooper stated that it was a mistake of the Red Jacket, not all parties and that the Town had nothing to do with it. Mr. Sares stated that Mr. Cooper had stated that it was a mistake of the Red Jacket, a stupid mistake. Mr. Martin stated he thinks the Board of Selectmen sent a strong message on Tuesday when Mr. Cooper came to them on allowing a conditional. Mr. Martin stated that the purview of what happens is that the Board of Selectmen has the enforcement side of it and this Board has the site plan regulations side of it. Mr. Martin stated that this Board cannot grant the waiver that Mr. Meier is asking for at this Board.

Mr. Sares asked are they open now. Mr. Drinkhall stated to the best of his knowledge they are. Mr. Meier stated that he did not think they were, but he did not know. David Beaudoin, General Manager, who was in the audience, stated that they are not open to the public. Mr. Drinkhall asked if they have operated in any form. Mr. Meier stated that this is part of the enforcement side and if this Board wants to keep it separate, let them talk to the Board of Selectmen and let them talk to the Court. Mr. Drinkhall stated that he would like something cleared up. Mr. Beaudoin left at this time. Mr. Meier stated that there is an injunction in effect and he would rather not have them testify. Mr. Drinkhall stated that he detects an attitude every time this issue comes up and there has been excuse after excuse being made.

Mr. Sares asked if they were open after the Board of Selectmen asked for an injunction. Mr. Meier stated from his understanding they were not. Earl Sires, Town Manger, who was in the audience, stated he has gathered from staff reports that they were open Friday, Saturday and Sunday [February 8th, 9th & 10th], but he does not know about this week. Mr. Sares stated that they were open because he knows someone who went there. Mr. Sares stated what this says to him is that the applicant received some sort of advice to violate the law. Mr. Sares asked Mr. Meier if that was true. Mr. Meier answered in the negative.

Mr. Sires stated that the applicant was notified in writing by staff that they were in violation of the Town's site plan process on Friday and they were open Friday, Saturday and Sunday; that's understandable. Mr. Sires stated that the Town did seek a temporary restraining order yesterday, which was granted. Mr. Sires stated that that it presently stands that there is a restraining order of them operating the water park.

Mr. Sares stated that he doesn't want to hurt the Red Jacket that is not his motive. Mr. Sares stated that he wants to be enabling and see how we can make this work. Mr. Sares stated that it is for the good of the town and no public benefit is derived or achieved by closing down the Red Jacket, but we need to keep in mind there is a process and if they want to stay open and pay the fine, that is fine with him as an individual, it may not be fine with the Board of Selectmen or other people, but for him individually he is okay with that. Mr. Sares stated, however, to come in and create an animus and create a controversy that puts that in jeopardy is egregious. Mr. Sares stated that we need to get back to the process before us and do a site plan review.

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Ms. Sell stated that the process must be adhered to and respected. Ms. Sell stated that this must be brought back for a site plan review and see what we can do with a building that is there, and discuss it then. Mr. Drinkhall asked Mr. Meier what it is he wants tonight that is within the Planning Board's purview. Mr. Meier stated he would like a determination to the applicability of the site plan review regulations, which there are two options; §123-4.A.4 and §123-4.A.5. Mr. Meier reviewed items a through d under §123-4.A.4.

Mr. Martin stated that he has nothing personal against the Red Jacket. Mr. Martin stated that he has strong feelings that everyone play by the same rules. Mr. Martin stated that the regulations are in place by the legislative body and are for this Board to enforce. Mr. Martin stated that it is nothing personal. Mr. Martin stated that he is not in favor of finding this insignificant and a site plan review should be required.

Ms. Sell stated that she suspects that the structure will create a significant amount of noise and she would like some sort of study done to see how it will affect the abutters. Mr. Meier stated that there was a previous request for a sound study and the results were submitted. Ms. Sell asked if it would affect any of the abutters. Mr. Meier stated he believes the noise levels that were estimated over 12 different points over the property at different times were estimated to be 50 decibels at the property line. Ms. Sell stated the noise is continual and all abutters should be notified. Mr. Meier stated they had suggested to the Board of Selectmen, if they were allowed to stay open the abutters would get a test run during that period of time, but it was denied. Ms. Sell stated that this is only an estimate.

Mr. Sares made a motion, seconded by Mr. Drinkhall, to make Mr. Meier's points of A through D into a motion. Mr. Irving stated that the Board may want to consider a finding of fact on whether or not the Board considers the changes that have come about due to this structure as a small undertaking. Mr. Irving stated if the Board doesn't find it's a small undertaking then none of those points are relevant anyway. **Mr. Sares withdrew his Motion and Mr. Drinkhall withdrew his second.**

Mr. Sares made a motion, seconded by Mr. Drinkhall, that the changes to the site constitute a small undertaking. Mr. Drinkhall asked for public comment; Jim Kelly of Thomas Dewhurst Law Firm stated that he is representing abutter Catherine Reddington and submitted a letter to the Board (attached). Mr. Kelly stated that Ms. Reddington's tenants complained about the noise to her, so there is your test run. Mr. Kelly stated that it is already built and built differently than what was proposed. Mr. Kelly stated that it is a nuisance and disturbs the abutter's quiet enjoyment of their home. Mr. Kelly stated that there should be a full review and a sound assessment by all the abutters and it should be part of the public record. Mr. Kelly stated that this should not be approved without a site plan review.

Catherine Reddington stated that she attended the first public hearing and they discussed the view and that everything should be enclosed. Ms. Reddington stated that she has owned her property for over 30 years and since this project began they have changed architects and lawyers, and here she is without notification. Ms. Reddington stated that she asked if everything was going to be enclosed, was told they would be and she was okay with that. Ms. Reddington stated that we got to this point do to due process.

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Ms. Reddington stated that there was nothing on the outside of that building. Ms. Reddington stated that we grilled them and it was crystal clear. Ms. Reddington stated that she does not fool around with her retirement and when she received an email from her tenant she drove up today as she wants her due process. Ms. Reddington stated that we went through it several times, they set it down and we all agreed and they didn't do it. Ms. Reddington asked what does that mean for the value of her home as this is winter and there is a lot of snow. Ms. Reddington asked what is going to happen in the summer when the windows are open. Ms. Reddington stated she would not back down, not an inch.

Ed Furman stated that he was at the same meeting as Ms. Reddington and Ms. Tobin did ask the question about the ventilation units and we were told that it was going to be enclosed. Mr. Furman stated that the park was to only be for hotel guests and now it is open to the general public. Mr. Furman asked what the traffic would be like if opened to the general public. Mr. Furman stated that he is not looking to shut down the Red Jacket, just the water park. Mr. Furman stated that their guests can still ski, shop and eat.

Mr. Furman stated when he asked for eight foot arborvitaes Mr. Martin stated they would require six foot arborvitaes as they grow two feet a year, so he would have eight foot arborvitaes in a year, but he doesn't even have trees yet. Mr. Furman stated that Ms. Reddington's house and his house are about 250-feet from the HRU and the only thing between us and the air conditioning unit is a parking lot. Mr. Furman stated that this unit was never included on the plans even at a meeting at the Red Jacket in 2006. Mr. Furman stated that the plans were totally different from a meeting in February and then they changed again in March and they have changed again.

Mr. Furman stated they want to keep promises to the guests, we all own homes and pay taxes and spend money in this valley, but why don't they want to keep promises to the abutters. Mr. Furman stated when a plan is changed, you do not go to City Council or the Board of Selectmen or the Building Inspector; you go to the Planning Board. Mr. Furman stated why they went to the Board of Selectmen, he does not know, but it has aggravated the situation for us and for you as well.

Mr. Furman stated personally a fine of \$275 a day is chump change and there is no holding their feet to the fire there. Mr. Furman asked what happened to the drainage. Mr. Furman stated that he would like to request that the Town engage an Acoustic Engineer and report to the Town at the Red Jacket's expense. Mr. Furman stated that they need to know that they are not being bamboozled again.

Mr. Furman stated that it is much easier to ask for forgiveness then ask for permission and we are standing here in that situation. Ms. Reddington stated that she has no malice toward the Red Jacket and there is no hostility, but there is tremendous disappointment and sadness. Ms. Reddington stated that she cannot let this corporation hinder her assets that she has worked so long for. Ms. Reddington asked what now and stated that she is in this for the long haul.

Ms. Sell asked if the arborvitaes that Mr. Furman was referring to were supposed to be planted a year ago. Mr. Irving stated that the usual and customary practice is to hold bonding for landscaping and be planted when the weather is appropriate. Mr. Sares stated there might not

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have been a General Manager there at the time as there was a shift in General Manager's during this process. Mr. Sares stated that he doesn't know who was in charge then and it could have contributed to this problem. **Motion unanimously defeated.**

Mr. Drinkhall made a motion, seconded by Ms. Sell, that the Planning Board find that the change of use and/or physical changes to the site are insignificant relative to the existing development. Motion unanimously defeated.

Ms. Tobin made a motion, seconded by Mr. Drinkhall, to find that a minor site plan review for the proposed changes is required. Mr. Martin stated he would like a report from an Acoustic Engineer. Ms. Sell suggested reviewing nonoise.org to Mr. Meier. Mr. Sares stated that a minimal way to reduce noise would be to enclose it and it shouldn't be difficult. Mr. Irving asked if there would be any objection from the applicant to individuals or pairs of Planning Board members visiting the site to listen from time to time. Mr. Meier answered in the negative.

Mr. Irving stated that he would urge the Board to not go in significant numbers that would constitute a quorum. Mr. Irving stated that he would strongly urge the Board to go and listen, but don't provide testimony or comment or take testimony or conversation on the site. Mr. Meier stated maybe they could set up times so they know that the unit is operating, as when Mr. Irving visited the site they were back washing it and it made more noise than it normally would.

Mr. Irving stated with the added complication the Board may want to notice a site visit. Mr. Sares stated that this is not that difficult, but what is shocking is that they have left it bare. Mr. Irving stated if it is okay individuals may want to go to the site and contact Mr. Meier to make arrangements. Mr. Irving stated to make sure not to have any ex-parte communications. **Motion unanimously carried.**

Mr. Martin asked if Mr. Meier would take under advisement about the Acoustic Engineer and have that available on February 28th. Mr. Martin stated that he would like to see nothing more than for this to go through on February 28th. Mr. Meier agreed. Mr. Sares stated if this Board had granted it as insignificant the abutters would never have had their day and by doing what we did we are giving the abutters the right to talk. Mr. Sares stated that is what makes this process so important.

Mr. Meier stated that he would like to ask the Board one question as he knows the Board has said that this Board has no authority over a Certificate of Occupancy, but the Board would have to sign off on any Certificate of Occupancy and since we requested a temporary Certificate of Occupancy we would like the Board's sign off so if the Board of Selectmen decide to grant the temporary Certificate of Occupancy we would have that sign off. Mr. Drinkhall stated that we don't have that right or authority. Mr. Meier stated under §123-49 the Board has to sign off on a Certificate of Occupancy. Mr. Irving stated there is a place on the Certificate of Occupancy where he signs off if the site is developed in accordance to the plan.

Mr. Sares stated here the General Manager walks out in a huff and Mr. Meier asks that of us. Mr. Sares stated that this Board does not get paid for this and we are not a dart board and then to

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walk out in a huff is disrespectful. Mr. Sares stated put yourself in our shoes. M. Beaudoin rejoined the meeting at this time and stated that he did not mean any disrespect to the Board when he left the meeting. Mr. Beaudoin stated he came here this evening thinking they were only discussing the Planning Board issue and when the issues got into whether they were operating or not he thought it was appropriate for him to get up and leave. Mr. Beaudoin stated if he did that in a disrespectful manner that was not his intent. Mr. Sares thanked him for coming back.

Meeting adjourned at 8:49 pm.

Respectfully Submitted,

Holly L. Meserve
Planning Assistant